SUPREME COURT OF THE UNITED STATES.

No. ~~205.~~ 94.

RACHEL CAMPBELL, APPELLANT,

vs.

BUSHROD W. REED, EXECUTOR OF WILLIAM CAMPBELL, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

GOVERNMENT PRINTING OFFICE.

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1 Circuit court of District of Columbia, on appeal from decision of the orphans' court.

BUSHROD W. REED, executor of the last will and testament of William Campbell, dec'd,
ag'st
RACHEL CAMPBELL.

To the Hon. James M. Wayne, an associate justice of the Supreme Court of the United States:

The petition of the above-named Rachel Campbell respectfully represents: that she considers herself aggrieved by the decree of the circuit court of the District of Columbia in the above case, made on the 27th day of October, 1862; and inasmuch as the amount in controversy is less than one thousand dollars, and she has no right to appeal from said decree, except by the special allowance of one of the justices of the Supreme Court, she herewith submits for your inspection the accompanying record, by which it is manifest, not only that great injustice was done to your petitioner's rights by the aforesaid decree, but that the errors complained of involve questions of
2 law of such extensive interest and operation as to render the final decision of them by the said Supreme Court desirable.

The only question decided by the said circuit court was that the widow, Rachel Campbell, was barred, by her acceptance of the provisions in her favor contained in the will of her deceased husband, from claiming, in her character as next of kin, any portion of the estate of her deceased husband not disposed of by the will. In this your petitioner submits there was manifest error.

Wherefore your petitioner prays that your honor will direct an order to the clerk of the circuit court of the District of Columbia allowing the appeal prayed for, as provided for by act of April 2d, 1816.

RACHEL CAMPBELL,
By ANDREW WYLIE, *Her Attorney.*

3 *To the clerk of the circuit court of the United States for the District of Columbia:*

And now to wit, December 12th, 1862, I, the said James M. Wayne, associate justice of the Supreme Court of the United States, having maturely considered the said petition of Rachel Campbell, to me addressed, and the error therein assigned, and having carefully inspected the record of the proceedings of the said circuit court of the District of Columbia in the premises, and being of opinion that the errors as-

signed involve questions of law of such extensive interest and operation as to render the final decision of them by the said Supreme Court desirable, and that an appeal from the final decree of said circuit court ought to be allowed, do by these presents, order, and direct that said appeal be allowed. upon the terms and conditions prescribed by law in cases of appeal from said circuit to said Supreme Court, where the amount in controversy is less than one thousand dollars, to wit: on giving bond as required by law, and upon the issuing and service of a citation as prescribed by the statute. In witness whereof, I have hereunto affixed my official signature the day and year above written.

JAMES M. WAYNE,
Associate Justice, Sup. Court U. States.

4 Know all men by these presents, that we, Andrew Wylie and Benj. B. French, are held and firmly bound unto Bushrod W. Reed, executors of the last will and testament of William Campbell, deceased, in the full and just sum of one hundred dollars, to be paid to the said Bushrod W. Reed, executor as aforesaid, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas in a cause depending in the circuit court of the United States for the District of Columbia, sitting as an appellate court to the orphans' court of said District, in a proceeding in said court in the matter of the estate of William Campbell, dec'd, on appeal from the said orphans' court, a decree was rendered against one Rachel Campbell, and the said Rachel Campbell having prayed an appeal to the Supreme Court of the United States, which is granted by the honorable James M. Wayne, associate justice of said Supreme Court:

Now the condition of the above obligation is such, that if the said Rachel Campbell shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

ANDREW WYLIE. [SEAL.]
B. B. FRENCH. [SEAL.]

Sealed and delivered in presence of—
THO'S C. MAGRUDER.

Approved by—

JAMES M. WAYNE,
Associate Justice, S. C. U. States.

5 DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Bushrod W. Reed, executor of the last will and testament of William Campbell, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of January next, pursuant to an appeal from the decree of

the circuit court of the United States for the District of Columbia, sitting as an appellate court to the orphans' court of said District, in a cause wherein Rachel Campbell is complainant in error, and you are defendant in error, to shew cause, if any you can, why the said decree should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

JAMES M. WAYNE,
Associate Justice, Sup. Court U. S.

6 DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the twentieth day of the same month, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh. Present: The Hons. James Dunlap, chief judge, James Morsell & Wm. M. Merrick, ass't judges, Ward H. Lamon, esqr., marshal, John A. Smith, clerk.

In the record of proceedings of the said court, among others, are the following, to wit:

BUSHROD W. REED, ex'or of WILLIAM CAMPBELL, *ags't* RACHEL CAMPBEL.

Be it remembered that on the 2d April, in the year of our Lord one thousand eight hundred and sixty-two, the said appellant, Bushrod W. Reed, executor of William Campbell, by William J.
7 Stone and Mattingly, esquires, his attorneys, appeared in court here, and at the same time the said Rachel Campbell, the appelee, appears in court here, by Andrew Wylie, esquire, her attorney, and the said parties, by their said attorneys, file in court here the following record of appeal from the orphan's court for the county of Washington, in the District of Columbia:

At an orphans' court held on the 26th day of October, Anno Domini 1861, for the county of Washington, in the District of Columbia, present, Hon. William F. Purcell, sole judge, and Moses Kelly, esquire, register of wills, the following proceedings were had.

The widow of Wm. Campbell, deceased, (colored,) admitted in open court that she had received from his executor, B. W. Reed, the furniture left her by the will of her late husband, appraised at $86 $\frac{40}{100}$.

B. W. Reed, executor of William Campbell, presented his account, and the same being correct, was passed.

Also, on the 29th October, 1861, Rachel Campbell presented petition asking payment to her of surplus remaining in the hands of

her late husband, Wm. Campbell, after payment of debts and legacies; the same was ordered to be filed.

8 Also, on the 5th November, 1861, Bushrod W. Reed, files answer to petition of Rachel Campbell; presented the 29th ult.

Also, on the 9th November, 1861, citation ordered and issued, on motion of Mr. Fendall, counsel for petitioner, against Mr. Fuller, to appear on 12th inst. as a witness in the case of Rachel Campbell *vs.* B. W. Reed, executor of William Campbell, dece'd.

Also, on the 21st December, 1861, Mr. Wiley, counsel for Rachel Campbell, offered in evidence the testimony of Kitty Pad, the reception of which was objected to by counsel for the executor of William Campbell, on the ground of the witness being a colored person; objection overruled.

Also, on the 24th December, 1861, case of Rachel Campbell called, and argued, by Mr. Wylie and Mr. Mattingly as to her right to the surplus of Wm. Campbell personal estate; decision reserved.

Also, on the 27th December, 1861, in case of Rachel Campbell, the following order was given, to wit: In matter of estate of William Campbell, deceased, ordered, that time be given to the parties claiming the residuary fund in this case, in opposition to the widow, be allowed till Saturday, the 11th day of January next, to take evidence to establish their claim.

WM. F. PURCELL.

Also, on the 14th January, 1862, counsel for Rachel Camp-
9 bell and the executor of William Campbell, deceased, presented in writing a statement of evidence agreed upon by them in the suit instituted by the former, and the same was ordered to be filed.

Also, on the 11th March, 1862, in the case of Rachel Campbell, widow of William Campbell, deceased, the following decision was made: Orphans' court, Washington co., 11 March, 1862, Campbell (widow) *vs.* Campbell.

It appears that the husband of the widow made his last will and testament, which has been duly proved in this court, and the executor, Reed, qualified. It is true that she received, under the will with others mentioned in the will, legacies, and of course did not renounce the provisions of the same; the question now is, is she entitled to dow'r as widow in the personalty not mentioned in the will, and as to which her husband died intestate? The statute of 1798 declares that a widow who does not renounce the will shall be barred of dower in her husband's estate; that must mean the estate conveyed in the will, no other, inasmuch as the supreme court of Maryland decided, in the case of Mantz *vs.* Buchanan, (1 Marland Reports, 202,) that a widow, standing by the will of her husband, is a purchaser of the devise with a fair consideration. (See also Snively *vs.* Bevans, 223, same volume, and Wilson *vs.* High Tower & others, 3 Hawks, in which the same principle is settled.) The answer of the executor and the other testimony in the cause proves the other

claimants to be illegitimate children, and cannot, therefore, inherit.

From the foregoing law and facts the court is of the opinion, and doth so decree, that the widow is entitled to the amount as to which Campbell died intestate, in the hands of the executor, the debts and legacies being all paid.

WM. F. PURCELL.

From which an appeal was prayed by W. J. Stone, jr., for the executor, and by Mr. Mattingly, for parties in interest, and the same was ordered on the said 11th day of March, 1862.

First account of B. W. Reed, executor of William Campbell, deceased.

This accountant charges himself as follows:

1861.	With appraised value of furniture, as per inventory		$886 40
	Cash in Bank of Metropolis to credit of deceased		373 34
	" hands of deceased at time of his death		101 05
	" from Basil Patterson, on ac. of note		51 25
	" " John Gray " "		260 70
	" " same " "		30 00
	" " B. Lawrence " "		35 00
	" " Julia Jones " "		27 00
	" " Wm. Craig " "		8 86
	" " Sam'l Payne		15 49
	Making		989 09

He credits himself with the following disbursements:

13 Nov., 1860.	To Harvey & Co., undertakers	Vo. 1	$80	00
" " "	" Benj. Mullin, for hack hire	2	4	00
" " "	" Regr. of wills, for court expenses	3	7	34
26 Dec. "	" Gales & Seaton, for advertising	4	3	00
14 Jan'y, 1861.	" Dr. ———, for prof'l services	5	7	00
28 Jan'y "	" J. P. Hilton, for judgment & costs	6	18	22
"	" W. Craig, for hauling	7	2	50
"	" C. Alexander, for rent	8	41	68
4 Oct. "	" Dr. Lincoln, for prof'l services	9	57	00
26 " "	" Dr. Stone " "	10	5	00
"	" Gales & Seaton, for advertising	11	3	75
"	" This amount being appraised value of furniture delivered to widow of deceased as directed by his will	12	86	40
26 Oct., 1861.	To W. J. Stone, for prof'l services	Vo. 13	30	00
" "	" Reg'r of wills, for expenses of court	14	6	55
" "	" commissions allowed executor		98	91
Balances for distribution			537	74
			989	09

Orphans' court, October 26, 1861.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared B. W. Reed, executor of William Campbell, deceased, and made oath on the Holy Evangels of Almighty God, that the aforegoing account as stated is just and true; that he has, bona fide, paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test:

MOSES KELLY,
Register of Wills.

12 *An account of the personal estate of William Campbell, deceased, by B. W. Reed, executor.*

Amount of assets returned to the orphans' court, per first and final account		$989 09
Deduct the same paid and allowed by the court, per same account		451 35
		$537 74
Am't costs of distribution		6 50
Leaving for distribution		$531 24

Of which the executor will pay over, as directed by the will of the deceased—

To Anne Butter, formerly Anne Forman, sister of deceased's first wife	$100 00	
To two grandchildren of deceased, issue of Martha Hutchenson, to wit:		
Lucinda	35 00	
Susan	35 00	
Lucy Thornton, niece of deceased	100 00	
The trustees of Asbury church, for the benefit of said church	20 00	
William Campbell, son of deceased	100 00	
		$390 00
Leaving subject to further order of the court		$141 24
Making as above		$531 24

E. E.

By order.
Test:

MOSES KELLY,
Register of Wills.

JANUARY 14, 1862.

13 In the name of God, amen.

I, William Campbell, of Washington city, do make, publish, and declare this as and for my last will and testament, hereby revooking all former wills by me made.

My will is, that my body be decently buried, and that my just debts and funeral charges be paid by my executor.

And as to the residue of my estate and property which shall not be required for the payments of my debts and expenses in and about the execution of this my will, I give and devise as follows, viz: I give and devise to my wife, Rachel Campbell, all my houshold furniture, to have and to hold the same to her and her executors, administrators, and assigns for ever. I also give to her lots six and seven, in square two hundred and eighty-two, with the improvements thereon, situate on Massachusetts avenue, to have and to hold the same to her for and during her natural life.

I give and devise to my son, William Campbell, all that portion of lots numbered twelve and thirteen, in subdivision of square numbered five hundred and eighty, together with the improvements thereon, which said portion of lots was conveyed to me by deed dated twenty-third of October, 1858, by the trustees of the Island Colored Building Association of the city of Washington, to have and to hold the same to him, the said William Campbell, his heirs and assigns, to his and their use and behoof forever.

14 I give, devise, and bequeath to my sister, Betsey Campbell, of Alexandria, Va., one-third of the reversion or remainder of lots six and seven, in square two hundred and eighty-two, after the decease of my wife, Rachel Campbell, to have and to hold the same to her, the said Betsey Campbell, her heirs and assigns, from and after the decease of my said wife, to her and their use and behoof forever.

I give and devise to my niece, Lucy Thornton, daughter of my deceased sister, Sally Campbell, two-thirds of the reversion or remainder of my lots six and seven, in square two hundred and eighty-two, situate on Masschusetts avenue, after the decease of my wife, Rachel Campbell, to have and to hold the same to her, the said Lucy Thornton, her heirs and assigns, from and after the decease of my said wife, to her and their use and behoof forever.

I give and bequeath one hundred dollars to Anne Butler, formerly Anne Forman, sister of my first wife.

I give and bequeath to my two grandchildren, Lucinda and Susan, issue of Martha Hutchinson, twenty-five dollars to each of them.

I give and bequeath one hundred dollars to my niece, Lucy Thornton.

I give and bequeath twenty dollars to the trustees of Asbury church, for the benefit of said church.

I give and bequeath one hundred dollars to my son, William Campbell.

And it is my will that the aforesaid money legacies are not to be made a charge on my real estate, and I do hereby nominate my

friend, Bushrod W. Reed, to be the executor of this my last will and testament.

15 In testimony whereof I, the William Campbell, have to this, my last will and testament, subscribed my name and affixed my seal this 23d day of August, 1860.

his
WILLIAM + CAMPBELL. [SEAL.]
mark.

Signed, sealed, and declared by the said William Campbell to be his last will and testament in the presence of us, who, at his request and in his presence, have subscribed our names as witnesses thereto.

WM. W. KING.
N. S. LINCOLN.
L. B. WYNNE.

DISTRICT OF COLUMBIA,
Washington County, to wit:

ORPHANS' COURT, *September* 18, 1860.

This day appeared N. S. Lincoln and L. B. Wynne, two of the subscribing witnesses to the aforegoing last will and testament of William Campbell, late of Washington county aforesaid, deceased, and severally and made oath on the Holy Evangels of Almighty God, that they did hear the testator therein named acknowledge the signing and sealing this will by making his mark thereto; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to best of apprehensions, of sound and disposing mind, memory, and understanding; and that they, together with William W. King, the other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence and at the request of the testator, but not in the presence of each other.

Test: ED. N. ROACH, *R'g Wills.*

DISTRICT OF COLUMBIA,
Washington County, to wit:

SEPTEMBER 20, 1860.

This day appeared William W. King, one of the subscribing witnesses to the aforegoing last will and testaments of William Campbell, late of Washington county aforesaid, deceased, and made oath on the Holy Evangels of Almighty God, that he did hear the testator therein named acknowledge the sign'g and sealing this will by making his mark thereto; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehensions, of sound and disposing mind, memory, and understanding; and that he, together with N. S. Lincoln and L. B. Wynne, the other subscribing witnesses, respectively subscribed their names as witnesses to this will, in the presence and at the request of the testator, but not in the presence of each other.

Sworn before—

ED. N. ROACH, *Reg. Wills.*

DISTRICT OF COLUMBIA,
Washington County, to wit:

The United States of America to J. P. Hilton and B. M. Reed, greeting:

17 This is to authorise you, jointly, to appraise the goods, chattels, and personal estate of William Campbell, late of Washington county, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath hereto annexed, a certificate whereof you are to return, annexed to an inventory of the said goods, chattels, and personal estate by you appraised, in dollars and cents; and in the said inventory you are to set down, in a column or columns, opposite to each article the value thereof.

Witness William F. Purcell, esq., judge of the orphans' court of Washington county, D. C., this 25 day of September, 1860.

Test: ED. N. ROACH, *Reg'r Wills.*

We, John P. Hilton and Bushrod M. Reed, do swear that we will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of William Campbell, late of Washington county, deceased, so far as the same shall come to our sight and knowledge, and will in all respects perform our duty as appraisers to the best of our skill and judgment. So help us God.

JNO. P. HILTON.
B. M. REED.

I certify that John P. Hilton and Bushrod M. Reed, the two appraisers named in the above warrant, took the annexed oath before me on the twenty-sixth day of September, 1860.

F. S. MYER,
Justice of the Peace.

18 WASHINGTON, D. C., *Sept.* 27, 1860.

This is to certify that the following is a true inventory of the goods, and their value as appraised by us, belonging to the estate of the late Wm. Campbell, deceased:

1 feather bed, 2 pillows and 1 boulster	$15 00
2 shuck matrasses	5 00
2 bedstead	5 00
1 bureau	3 00
1 writing desk	4 00
1 washstand, 50 c.; 1 candlestand, 50 c	1 00
11 chairs, 50 c	5 50
2 p'r sheets, 1 50; 2 quilts; 1 50; 1 blanket, 50	3 50
2 counterpanes, 1 50; toilet set, 1 00	2 50
5 candlesticks, 1 25; 1 spit-box, 25	1 50
1 sofa, 3 00; 1 sideboard, 8 00	11 00
3 venitian curtains	2 25
1 looking-glass, 4 00; 3 pictures, 37	4 37

1 mahog. workstand, 2 00; 22 plates, (assorted,) 66	2 66
1 lot croc. ware, 37; 1 p'r waiters, 50	87
Lot glassware, 75; set castors, 50	1 25
2 wood chests, 2 00; tub, buckets, and barrel, 2 50	4 50
Oyster box, 1 00; horse and saw, 1 00	2 00
1 kitchen table	75
1 tin safe, 2 50; 1 lounge, 50	3 00
4 stools, 50; 1 stove and fireboard, 4	$4 00
1 lot tinware, 1 00; knives and folks, 75	1 75
3 chandeliers	1 50
	$86 40

J. M. P. HILTON.
B. W. REED.

19 DISTRICT OF COLUMBIA,
Washington County, to wit:

APRIL 8, 1861.

This day appeared B. W. Reed, executor of William Campbell, late of Washington county aforesaid, deceased, and made oath on the Holy Evangels of Almighty God, that the aforegoing is a just and true inventory of the goods, chattels, and personal estate of said deceased, that hath come to his hands or knowledge at the time of making thereof; that what hath since or shall hereafter come to his hands or knowledge, he will return in an additional inventory; that he knows of no concealment of any part of said deceased's estate by any person whatsoever; that if he shall hereafter discover any concealment, or suspect any to be, he will acquaint the court with the same.

Test: ED. N. ROACH, *Reg'r Wills.*

Cash in Bank of Metropolis	$373 34
Cash in hand	101 05
Note, Bazil Patterson, dated June, 1860, six months	50 00
" John Gray, endorsed John Lewis, 17 May, 1860, twelve	255 00
" Ben. Lanum, Oct. 13, 1859, with interest, (part claim to be paid)	100 00
Due bill, November 3, 1859, credited on same $35 00, Benj. Lanum	10 00
Note, John Gray, 17 May, 1860, six months	30 00
Account, William Wilkerson, house rent, 14 April, 1860	25 00
Note, Wm. Craig, 9 July, 1858, six months	10 00
Note, Samuel Paine, 12 May, 1857, three months, 30 00, credited 19 00	11 00
Note, S. R. Townly, 28 May, 1859, six dollars to be paid on the first July, and six to be paid on first August	12 00
Account, Isaac Landek, 1854, to June 1, 1860	15 75
Estate of the late David Finch, 28 July, 1856	4 32
20 Note, W. W. King, 1 October, 1855, eight months	150 00

Note, J. W. Brooks, 29 June, 1854, sixty days after date	10 00
Abraham Junper, house rent, (June,)	28 00
Julia Jones, hou. rent, (Sept. 1, 1860,)	16 00

DISTRICT OF COLUMBIA,
Washington County, to wit:

SEPTEMBER 9, 1861.

The day appeared B. W. R. Reed, executor of Wm. Campbell, deceased, and made oath on the Holy Evangels of Almighty God, that the within is a true and perfect list of debts belonging to the estate of said deceased that hath come to his hands or knowledge, and that he does not know of any other.

Test: ED. N. ROACH, *Reg'r Wills.*

To the Hon. W. F. Purcell, judge of the orphans' court of Washington county:

The petition of Rachel Campbell, widow of the late William Campbell, deceased, respectfully shows: That your petitioner was married to said decedent some time in the latter part of 1854, or in the beginning of 1855, by the Rev. William Hank; that her said husband had been previously married to one Milly Gantt, who died without his having had any children by her; that he was never married to any other person, and died sometime in the month of September, 1860, without having any lawful child or children surviving him, having first made a will, dated August 23, 1860, by which he disposed of all his real estate, and the greater portion of his personal property, and appointed Bushrod W. Reed executor thereof;
21 that it appears by the account of said executor filed in the office of the register of wills, that, after complying with the provisions of said will, and paying all necessary expenses and costs, that there will be, from moneys already collected, a surplus or residuum of $163 29, or thereabouts, left in his hands undisposed of; that your petitioner was always informed and believed that her said husband had no free blood relations executing Betsy Campbell, who claims to be his half-sister, and to whom he devised one-third of the reversion of certain real estate named in said will; and Lucy Thornton, said to be his neice, and to whom he bequeathed one hundred dollars by said will; that Lucinda and Susan Hutchenson, named in said will, are grandchildren of said Milly Gantt by her first husband, and not the grandchildren of your petitioner's said husband; and that the mother of William Campbell, named in the will, is still living, and was never married to your petitioner's said husband.

Your petitioner therefore respectfully prays that your honor will pass an order directing the said executor to pay to your petitioner all the personal property which remains, after complying with the pro-

visions of said will, or so much thereof as she may be justly entitled to receive.

And your petitioner will ever pray, &c.

W. Y. FENDALL, *for Pet'r.*

Sworn to in open court this 29 Oct., 1861.

Test: MOSES KELLY, *Reg. Wills.*

22 Indorsed as follows: *In re.* Estate of Wm. Campbell—petition of Rachel Campbell. Filed Oct. 29, 1861.

To the honorable William F. Purcell, judge of the orphans' court of the District of Columbia:

The answer of Bushrod W. Reed, executor of William Campbell, deceased, to the petition of Rachel Campbell, claiming to be the widow of his said testator, filed against him.

This respondent is informed and believes, that said Rachel was lawfully married to his said testator, and that she is now his widow, as charged in her said petition.

This respondent believes it to be true that the first wife of his said testator was deceased prior to the time of his marriage with said Rachel.

This respondent does not know whether or not his said testator left any relations capable in law of inheriting from him.

This respondent does not know whether his said testator was ever married to the mother of the William Campbell spoken of as the son of the testator, in his said will, and cannot say whether or not said William is his legitimate son. This respondent believes that he is not the legitimate son of his said testator. This respondent is advised that it is doubtful whether said Rachel is entitled to any portion of the surplus of the personal estate of his said testator, after the payment of his debts and the legacies bequeathed by his said

23 will; and therefore requires, for his own protection, that she shall establish her right thereto by due process of law. This respondent shows unto your honor, that, by the will of his said testator, a portion of his real and personal estate was devised and bequeathed to said Rachel, and that she did not renounce the said devise and bequest under said will, but accepted the same, and is now in the full enjoyment thereof. That, by the act of Maryland, of 1798, ch. 101, sub. 13 (see Dorsey's Testamentary Law, p. 123,) every devise of land, or of any estate therein, "or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in land or share of the personal estate, respectively, unless it be otherwise expressed in the will.

"A widow shall be barred of her right of dower in land or share in the personal estate, by any such devise or bequest, unless within ninety days after the authentication or probet of the will she shall deliver or transmit to the court, where such authentication or probat hath been made, a written renunciation in the following form, or to the following effect, viz: but by renouncing all claim to a devise of

bequest, or devises or bequests of personal property, made to her by the will of her husband, she shall be entitled to one-third part of the personal estate of her husband, which shall remain after the payment of his just debts and claims against him, and no more." (P. 124.)

If the will of the husband devise a part of both real and "personal estate, she shall renounce the whole, or be otherwise barred of her right to both real and personal estate."

This respondent deems it material to call attention to the
24 provision of the statute, that the widow renouncing does not receive the portion she would have been entitled to if there had been no will, and the intestate had died without children. This respondent submits that, although said Rachel, by renouncing the devise and bequest under the will of her husband, and claiming her legal share of his personal estate, would have been entitled to one-third part thereof, yet, having accepted the devise and bequest under the will, she took it in lieu of her legal share, and was thereby barred from claiming any further portion of it.

This respondent further shows that his said testator, in his lifetime, expended about $300 in repairs on the house which he devised to said Rachel, and that, altho' the portion of personal estate received by her may not be equal to her legal share (if she had renounced the devise and bequest under the will,) yet, when the real and personal estate are taken together, she is well provided for, and if she had renounced both the devise and bequest (as she must necessarily have done,) she would not have received, as this respondent verily believes, as valuable a share of her husband's estate as she now has. This respondent has no desire to deprive said Rachel of any right she may have, but desires to be protected in the distribution of said personal estate against any risk of loss to himself. This respondent having answered fully, submits for your honor's consideration the rights of said Rachel and his duty in reference thereto.

W. J. STONE, JNR.,
For Resp't.

25 Orphans' court.

DISTRICT OF COLUMBIA,
Washington County, to wit:

In open court, on this fifth day of November, A. D. 1861, personally came Bushrod W. Reed, who, having been first duly sworn, does say, that the matters and things stated in the annexed answer are true, to the best of his knowledge and belief.

Sworn before—

MOSES KELLEY,
Register of Wills.

Endorsed as follows: Bushrod W. Reed *ats*, Rachel Campbell. Answer of B. W. Reed, ex'r of William Campbell, to petition of Rachel Campbell. Filed 5 Nov., '61.

WASHINGTON COUNTY, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to cite and summon Mr. Fuller, that he appear before the orphans' court, of Washington county, to be held at the city of Washington, in and for said county, on Tuesday, the 12th inst., as a witness in the case of Rachel Campbell *vs.* B. W. Reed, ex'r of Wm. Campbell, dec'd.

Witness William F. Purcell, esq., judge of the orphans' [L. S.] court, of Washington county, D. C., this 8th day of November, 1861.

Test: MOSES KELLEY,
Register of Wills.

26 Endorsed as follows: Cited.

W. H. LAMON, *Marshal.*

DISTRICT OF COLUMBIA, *sct.:*

Orphans' court in the matter of the plenary proceeding of the estate of William Campbell, deceased.

Personally appeared in open court, this 14th day of December, 1861, Rachel Campbell, widow of the said William Campbell, dec'd, and party to the aforesaid proceeding, and being duly sworn, says, that Kitty Pad is an important and material witness in her behalf, in said proceeding; that said Kitty Pad is sick and not likely to live, and is unable to attend court; and that deponent is anxious to have the testimony of said witness perpetuated, as provided in the act of Maryland of July, 1779, chapter 8, section 6.

Sworn to.

MOSES KELLY,
Register of Wills.

The above-named deponent will be permitted to take the deposition of the said Kitty Pad, on condition that she or her counsel give notice to the opposing counsel, of at least twenty-four hours, of the time and place of taking the said deposition.

WM. F. PURCELL.

14 DECEMBER, 1861.

DISTRICT OF COLUMBIA, *sct.:*

27 Orphans' Court in the matter of the penary proceeding of the estate of William Campbell, dec'd.

Copy.

To William J. Stone, esq., counsel for B. W. Reed, executor:

Please take notice that, in pursuance of permission granted by the said court, I shall proceed to take the deposition of Kitty Pad, an aged and infirm witness, on Monday next, the 16th day of December,

1861, at her residence, No. 332, on 10th street, between M and N streets north, in the city of Washington, at 2 o'clock p. m., before some justice of the peace, or other competant authority, when and wheee you can attend to cross-examine, if you think proper.

ANDREW WYLIE,
For RACHEL CAMPBELL.

Served on Mr. Stone, by copy, Dec. 14, 1861 at 3 o'clock p. m.
A. WYLIE.

Depositions of Kitty Pad, the witness mentioned in the foregoing notice, taken in the city of Washington, December 16th, 1861, at 2 o'clock p. m., at her residence, 332 10th street west, in presence of Andrew Wiley, counsel for Rachel Campbell, widow of William Campbell, deceased, and Wm. F. Mattingly, counsel for B. W. Reed and the heirs of Wm. Campbell, and parties claiming to be heirs-at-law and distributees of Wm. Campbell, said parties being named in the wills as legatees of said Wm. Campbell.

(The deposition was objected to, in advance, by Mr. Mattingly, as inadmisable, because the witness being a negro.)

Kitty Pad, being duly sworn, she says: she is a good deal older
28 than seventy, as she had two children at the time of the battle at Bladensburg, and am now very sick, confined to bed. I knew Charles Campbell, father of Wm. Campbell. Cha's Campbell was a slave in Virginia, Louden co., and I was a slave in the same family. I knew Wm. Campbell, his son, who was the husband of Rachel Campbell, the widow named in this proceedings. Cha's Campbell was never married, and Wm. Campbell was his ilegitimate son. The said Wm. Campbell had one sister and one brother, both of whom were ilegitimate, and died slaves, without heirs. Wm. Campbell, the testator named in this proceeding, was twice married; his first wife was Emilie, a free woman. I was not present at their marriage, but saw the company returning from the wedding, and they lived together as man and wife till she died. No children by this marriage. The second wife was Rachel, the widow of the said Wm. Campbell, and he left no children by this marriage. He never was maried except twice. Wm. Campbell never married until he got free, and after that, got married twice, as already said. I knew him from his boyhood till he died. I often heard him speak of his son William, and said that he had a fine son by some woman up in Fairfax county. I never understood that that woman was his wife, and never called her his wife, but he said that he had a son by that woman. I never heard him say that she was not his wife. I heard colored persons on the farm never say anything about them. I am a free woman now.

her
KITTY + PAD.
mark.

I hereby certify that the above depositions were taken by me at the time and place, and in the presence the persons mentioned in the caption thereof.

Witness my hand and seal this 16th day of December, 1861.

CHA'S WALTER, *J. P.* [SEAL.]

In the orphans' court of the District of Columbia, and matter of the distribution of the residuary estate, late of William Campbell, deceased.

It is admitted for the purposes of this cause, that B. W. Reed, the executor, is a Christian white freeman of this district; also, that the testator was a free colored person at the time of making his said will, and at the time of his death. That all the parties claiming the fund in question, are free colored persons, and were such at the date of the will aforesaid, and since; and that Kitty Pad, the witness, whose deposition has been taken and filed in this proceeding, at the instance of the widow of the said testator, is an ancient and infirm person, and in consequence thereof, cannot be had to attend in court to give her evidence; also, that she now is, and was, at the time of taking said deposition, a free colored person.

ANDREW WYLIE,
For RACHEL CAMPBELL.

The executor, B. W. Reed, objects to the admissibility of the testimony of the negro, Kitty Pad, against himself, which objection was made before the testimony was taken; he admits the above statement.

W. J. STONE, JUN.,
For ex. REED.
WM. F. MATTINGLY,
For all Distributees except the Widow.

JAN'Y 14, 1862.

Endorsed as follows: Evidence agreed upon by counsel in case of Rachel Campbell. Filed 14 Jan., '62.

In matter of estate of William Campbell, deceased, ordered that time be given to the parties claiming the residuary fund, in this case, in opposition to the widow, be allowed till Saturday, the 11th day of January next, to take evidence to establish their claim.

WM. F. PURCELL.

28th DEC'R, 1861.

The widow is excluded from any share of the husband's estate by a settlement made in lieu before marriage. "But it is otherwise when the husband, by will, makes a provision for his wife, stating it to be in lieu, and in bar, of all her claims on his personal estate, and then subjects his personality to a deposition which lapses, or is void, so that the latter fund is subject to distrobation for them, notwithstanding the words of the will the widow is entitled to a share under the statute.—(Wms. Exr's, 1278, citing Cave Roberts, and 8 Sim., 214.)

The principle of this distribution is, that where a woman has before marriage agreed to accept a consideration for her widow share,
31 she is bound by her compact, whether her husband died testate or intestate; but where there is no such contract, but the provision, in bar of the distrobutive share, arises upon the husband's will, it is presumed that the motive for the widow's exclusion originated in a particular design or purpose of the testator, viz: for the benefit of the person in favor of whom the property was bequeathed by him; so that if the purpose be disapointed, there is no reason why the bar or exclusion should continue."

The foregoing extract I have made verbatim from Williams on Executors, at page 1278.

ANDREW WYLIE.

Is a widow, who has accepted a bequest of personal estate left her by the will of her deceased husband, entitled to a share of the residue of the personal estate undisposed of by the will?

The act of Md., ch. CI, sub. ch. 13, says: "Every devise of land, or any estate therein, or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in lands, or share of the personal estate respectively, unless it be otherwise expressed in the will." Section second of the same act gives the widow ninety days in which to elect between the bequest under the will and her distributive share. Now, what is ment by the widow's "share of the personal estate?" Sub. ch. 11 of the same act, in providing for the distrobation of an intestate's estate, gives the widow the whole, one-half, or one-third, according to the circum-
32 stances mentioned in the act. Section 4th and following section provides for the distrobation of the surplus, "exclusive of the widow's share."

The argument in favor of the widow is that, so far as the undisposed-of residue is concerned, the husband dies intestate, and distrobation is made, according to sub. ch. 11, or his widow takes as next of kin.

The widow's share is the whole amount, or one-half, or one-third of the whole amount, after payment of debts, according to circumstances. She has ninety days in which to ascertain whether her distributive share will be more than the bequest in the will, and to take her choice to elect between them. She abides by the *the* will, and accepts the bequest made therein. The law says that such bequest shall be construed to be intended in bar of her share of the personal estate. In saying that so far as the undisposed-of residue is concerned the deceased is intestate, can we totally ignore the existence of the will, the fact of the widow's acceptance of the bequest made her in it, and distribute according to ch. 11, when ch. 13 says that such bequest shall be in bar of her share? Of what? not simply of that portion which he disposed of by his will, but of the personal estate, both that of which he died testate and intestate.

Suppose a man in his will should make but one bequest, and that to his widow, and she should accept it; would any one pretend to say

that she would be entitled to that and *and* a distributive share of the residue also, in the face of a law which declares that such bequest shall be in bar of her share? 1 Jarman on Wills, 408, says:
33 "The question is always a question of intuition to be collected from the whole will." At common law the widow was entitled to both the bequest made her in the will and her distributive share, unless it were otherwise expressed in the will, or unless at least a contrary intention could be collected from the whole will. But our law, in order to avoid all question as to the intention of the testator, expressly states that a bequest of the personal estate shall be construed to be intended in bar of her share of the personal estate.

Williams on Executors, 1342 and 3, is as follows: "Where the settlement is expressed to be" as and "for her jointure, in full lieu, bar, and satisfaction of any dower or thirds which she could or might claim at common law out of all or any of the estates, real, personal, or freehold, of her intended husband, the widow will be excluded from her share under the statute; for the words common law must be construed as equivolent to the terms, 'according to the general law.'" In such cases, whether the husband die intestate or dispose of his personal estate by will, which disposition fails by lapse, the wife will be equally excluded from the distributive share. But it is otherwise when the husband, by will, makes a provision for his wife, stating it to be in lieu, and in bar, of all her claims in his personal estate, and then subject his personalty to a disposition which lapses, or is void, so that the latter fund is subject to distrobation; for then, notwithstanding the words of the will, the widow is entitled to a share under the statute. The principle of this distinction is that, where a woman has, before marriage, agreed to accept a consideration for her widow's share, she is bound by her compact, whether her husband die
34 testate or intestate; but where there is no such contract, but the provision, in bar of the distributive share, arises upon the husband's will, it is presumed that the motive for the widow's exclusion originated in a particular design or purpose of the testator, viz: for the benefit of the person in favor of whom the property was bequeathed by him, so that if the purpose be disappointed, there is no reason why the bar or exclusion should continue.

Under our law it would be very questionable whether ever in the case of lapsed or void devise the widow would be entitled to her distributive share in addition to a bequest in the will, but in the case at bar, (which is one of an undisposed residue and not of a lapsed or void bequest,) there can be no question on the ground of intention, as the law itself prescribes how the intention shall be construed. That the wife is not next of kin to her husband.—(See 2 Jarmon on Wills, 49, and cases there cited.)

In Cave *vs.* Roberts, (8th Simons, 214,) the decision of the vice-chancellor is as follows: "I have always thought it to be clear, that in all cases where a person dies intestate, leaving a widow, and there are no persons who answer the character of next of kin, as for instance, where a husband who is illegitimate dies without issue, the widow takes one moiety of his personal estate, and the crown is entitle to the

other moiety; and as that has been the received opinion of the profession for a series of years, I shall not now overrule it."

At common law a settlement made before marriage is an absolute bar on the ground of a contract or agreement between the parties. So in the case at bar, the widow and her deceased husband married
35 in consideration of the law, with reference to the existing state of the law relative to their respective rights and obligations; so that the law, stating that a widow who accepts a bequest personalty shall be barred of her distributive share, is equivolent to a contract or agreement entered into between the parties at the time of marriage, to the effect that a bequest of personalty accepted by the widow shall bar her of her distributive share, in which case there cannot be any doubt but that she would be barred, and it is an indisputable principle of law that parties entering into contracts do so with reference to the state of the law governing such contracts.

WM. F. MATTINGLY.

DISTRICT OF COLUMBIA,
Washington County, to wit:

I hereby certify that the aforegoing is a correct transcript of the proceedings in the orphans' court for Washington county aforesaid, in the case of Campbell (widow) *vs.* Campbell, &c., filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office this 26th day of March, A. D. [SEAL.] 1862.

MOSES KELLY,
Register of Wills.

And said cause, with consent of the parties, by their attorneys aforesaid, and by order of the court, was continued until the third Monday of October next.

26 And now, to wit, the said third Monday of October, in the year one thousand eight hundred and sitxy-two, come again into court as well the appellant, by his attorneys, as the the appellee, by her attorney, and the said cause being ready for hearing, and coming on to be heard, the record being read and fully argued by counsel on both sides, and the matter being fully understood, and mature deliberation thereon had, the court, this 27th day of October, 1862, reverse the judgment of the orphans' court, and remand the case to that court, with directions to dismiss with costs the petition of Rachel Campbell. And thereupon the said appellee, by her attorney aforesaid, prays an appeal from the judgment and decree aforesaid, made by the court in the premises, to the Supreme Court of the United States, and said motion is still pending.

Test: JNO. A. SMITH, *Clerk.*

Supreme Court of the United States.

No. 94.

RACHEL CAMPBELL, APPELLANT,

vs.

WILLIAM CAMPBELL'S EXECUTOR.

APPEAL FROM THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

Brief for Appellant.

This is an appeal from a decree of the late Circuit Court of the District of Columbia, reversing the decision of the Orphans' Court, on appeal. The sum in controversy, although considerably above $100, is less than $1,000, and was not sufficient to authorize an appeal without its special allowance by one of the justices of this court.

That allowance was granted in proper form by Mr. Justice Wayne, under the second section of act of 2d April, 1816. (3d St. at L., 261, and Brightly's Digest, p. 235, sec. 14.)

Testator, by his will, made provision for his widow and several illegitimate children, but after paying all the legacies the fund in dispute remained in the hands of the executor undisposed of, there being no residuary legatee

GIDEON & PEARSON, Printers.

named in the will who could take it, and no legitimate children, parents, &c., or collateral relations who had the right to claim it as next of kin in preference to the widow.

The executor, on his part, has disclaimed any right to retain the money for himself, and the evidence shows that the widow is the next of kin and entitled to the whole fund, unless she is precluded by having accepted the provision made for her in the will.

The act of Maryland of November, 1798, ch. 101, sub ch. 11, in force in this District, provides that after the debts, &c., have all been paid:

"1. If the intestate leave a widow and no child, parent, grand-child, brother, or sister, or the child of a brother or sister of the said intestate, the said widow shall be entitled to the whole." (Dorsey's Laws of Maryland, p. 401.)

In the present case there was an intestacy as to the funds in question, and the intestate left no child, parent, grand-child, brother, or sister, or the child of a brother or sister. The widow is, therefore, the next of kin and entitled to the fund, unless she has lost her right by accepting her provision under the will.

Sub chapter 13 of the same act declares that "Every devise of land, or any estate therein, or bequest of personal estate to the wife of the testator *shall be construed* to be intended in bar of her dower in lands or share of the personal estate respectively, unless it be otherwise expressed in the will." (Dorsey's Laws of Maryland, pp. 406–7.)

This provision of the act was evidently intended for the case of complete testacy as to property and to furnish simply a rule of construction of wills in such cases. The "devise" or "bequest" which would bar in such cases is a devise or bequest to the "widow of the testator."

But as to the fund in dispute in this case she is not the widow of the testator, for there was no testator of the

fund. The fund is to be distributed as though there had never been a will opened or seen.

In the case of Pickering vs. Ld. Stamford, 3 Vesey R., 332 and 492, this precise question was examined and decided, first by the Master of the Rolls and afterwards on appeal by the Lord Chancellor. There the testator devised to his wife real and personal estate to be taken in bar of all dower or thirds. The residue of the estate he bequeathed in trust for certain charities. These bequests turned out to be contrary to law and void, so that the fund lapsed and became a residue in the estate not disposed of by the will.

The widow claimed the estate as next of kin, and the question was whether she was not barred by the terms of the will and her acceptance under it. It was held that she was not barred, and that neither an heir-at-law nor the next of kin can be barred by any thing but a disposition of the property by the will.

The Lord Chancellor, at page 493, declares that: "Notwithstanding all words of anger and dislike applied to the heir he will take what is not disposed of. It is impossible to make a different rule as to the personal estate with regard to what is not disposed of. Here is a legal intestacy, for the gift to the charity is void at law. Being a legal intestacy I am to control the statute of distributions. How can the court possibly do that? I must close the will and cannot look at it."

The other question in the case arises upon the competency of the evidence, which the Orphans' Court admitted, to prove that the appellant was not of kin to her deceased husband under the Maryland statute already cited.

The testator was a free colored man, the widow was a free colored woman. There were no children, nor father or mother, nor any others to claim in preference to the widow. All the collateral relations of testator must have been of his own color.

But the executor was a white man. Colored testimony

was admitted by the Orphans' Court to prove that the testator had been born a slave in Virginia; that his first wife had been a slave and his children by her were all slaves, and were all therefore incapable of claiming as next of kin in the present case; that subsequently to his first wife's death the testator obtained his freedom, removed to the City of Washington, and married the appellant, but that no children were born from this marriage.

The Circuit Court having decided against the claim of the widow on the first point gave no opinion upon the question of the competency of this evidence. But should this court be of opinion that the decision of the Circuit Court on the first point was erroneous then it will become necessary to decide further whether this negro testimony was properly received by the Orphans' Court.

Kitty Pad, the witness by whose testimony the above facts were proved, was a free colored person and a competent witness, unless disqualified under the second section of the Maryland act of May, 1717, ch. 13, which is as follows: "No negro or mulatto slave, free negro, or mulatto born of a white woman, during his time of servitude by law, or any Indian slave, or free Indian natives, of this or the neighboring provinces, be admitted and received as good and valid evidence in law in any matter or thing whatsoever depending before any court of record, or before any magistrate within this province, *wherein any Christian white person is concerned.*"

Was the fact that the executor in the present case was a Christian white person a good ground under this act to exclude negro testimony when all the parties claiming a beneficial interest in the estate were colored persons? The executor himself has acknowledged upon the record that he claims no beneficial interest in the decision of the question. Nor would it be allowed him if he had claimed it.

In Lupton vs. Lupton, 2 Johns. Ch. R., 625, Chancellor

Kent held that the executor was not interested as to which of several claimants should get the money which he admitted to be in his hands for distribution, and was therefore a competent witness between them, although he was a party defendant to the bill which had been taken pro confesso against him. The Chancellor says: "He has received the amount of the legacies and is bound to refund to either one party or the other. He therefore stands indifferent, or at least has no interest in the success of the defence, and is a competent witness for the defendants."

The word "concerned" in the statute must be construed as synonymous with "interested" in the legal signification of this word.

This executor might himself, therefore, have been a competent witness between the parties claiming to the distributees of the fund. If he might have been a witness he could not have been so "concerned" in the case as to exclude the testimony of a witness on the ground of color.

C. EAMES,
of Counsel for Appellant.

1265

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

NO. 94.

ON APPEAL FROM THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

RACHEL CAMPBELL vs. BUSHROD W. REED,

EXECUTOR OF WM. CAMPBELL.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

NO. 94.

ON APPEAL FROM THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

RACHEL CAMPBELL vs. BUSHROD W. REED,

EXECUTOR OF WM. CAMPBELL.

This case comes up on appeal (by special allocatur) from a decree of the Circuit Court of the District of Columbia.

The case is as follows:—William Campbell, by his last will and testament, duly executed on August 23, 1860, (p. 7 R.) devised and bequeathed to his wife, Rachel Campbell, the appellant, a portion of both his real and personal estate, and also devised and bequeathed other portions of his estate to "my son," "my niece," and "my sister;" and appointed B. W. Reed, the appellee, his executor. After the payment of all debts, legacies, &c., on a settlement of the personal estate, made by the executor in the Orphans' Court, there was found to be a surplus of $141.24, undisposed of by the will. The widow did not renounce the devise and bequest under the will, but accepted the same, and is now in the full enjoyment thereof, (p. 3 R.) The devise and bequest together amounted to more than she would have been entitled to had

she renounced the will, as appears from the answer of the executor—the case having been tried on the petition and answer without replication, (p. 13 R.) The appellant claimed the whole surplus as the widow of William Campbell, under the act of Maryland, 1798, ch. 101, sub-ch. 11, section 1: contending that he died intestate as to it, and left no "child, parent, grand-child, brother or sister, or the child of a brother or sister." The executor resisted the claim, on the ground that, having accepted the bequest under the will, by sub-chapter 13, sections 1 and 2 of the same act, she was barred of her legal share in the personal estate.

The Orphans' Court decided in favor of the widow. On appeal, the Circuit Court reversed the decree, and decided that the widow having accepted the bequest under the will, was thereby "barred" of her share in the personal estate.

The amount in controversy is $141.24.

A preliminary question, not affecting the merits of the case, must first be considered.

The appeal in this case was allowed by a judge of this court, on December 12th, 1862, as appears from the papers filed in the clerk's office as a copy of the record. Up to this time no complete transcript of the record, duly certified under the hand and seal of the clerk of the Circuit Court of the District of Columbia, has been filed. The papers filed seem to be "a copy of the proceedings complained of," which was prepared to accompany the petition on the application to the judge for the special allocatur.

The appellee, by his counsel, now moves that the case be docketed and dismissed, under the ninth rule of this court; and submits, that the "copy of the proceedings" filed by the appellant supplies the place of the clerk's certificate required by that rule.

If the court shall think that the papers filed are sufficient then the following points will be presented and relied on by the appellee:

I.

This court has no jurisdiction in this case.

II.

The widow having accepted the bequest made to her by the will of her husband, is barred of any further share or interest in his personal estate.

I.

Has this court jurisdiction?

The act of Congress of April 2d, 1816, ch. 40, section 1, 3 vol. U. S. Stat., page 261, limits the right of appeal to this court from the Circuit Court of the District of Columbia to cases in which the matter in dispute, exclusive of costs, shall be of the value of $1,000 or upwards.

Section 2 provides, that, if the matter in dispute, exclusive of costs, shall be of the value of $100 and less value than $1,000, and "any questions of law of *such extensive interest and operation* as to render the final decision of them by the Supreme Court desirable," are involved in the alleged errors of the Circuit Court, a single judge of this court on a petition, accompanied by "a copy of the proceedings complained of and an assignment of the errors relied on," may, by an order to the clerk of the Circuit Court, direct an appeal to be allowed.

The amount in controversy in this case being less than $1,000, an appeal cannot be allowed unless "questions of law of such *extensive interest and operation* as to render the final decision of them by the Supreme Court desirable," are involved.

The decision of the judge granting the allocatur, does not establish the jurisdiction.—Callan vs. May, 2 Black, 543.

The question involved in this case, is the construction of a local statute of the District of Columbia, which has no

effect beyond its limits, and does not affect even an entire class of persons within it. It is not a question of *extensive interest and operation.*

There is no question, arising under the commercial law, or international law, or under a statute of the United Sates, having effect beyond the District of Columbia, or in which the Government is interested. The following cases will indicate the true construction of the second section of the act of Congress of April 2d, 1816:

Nichols vs. Fearson, 7 Peters, p. 103.

U. S. vs. Ringgold, 8 Peters, p. 150.

It will be contended that this case is not within the exception of the second section of said act of Congress, and that the appeal should be dismissed for want of jurisdiction.

II.

Has the widow any right to the undisposed of surplus of her husband's personal estate, she having accepted a bequest under his will?

This question depends upon the true construction of the act of Assembly of Maryland, of 1798, chapter 101, sub-ch. 13, (Dorsey's Testamentary Law, p. 123;) the main provisions of which are as follows:

Section 1.—"*Every devise of land, or of any estate therein, or bequest of personal estate to the wife of the testator shall be construed to be intended in bar of her dower in lands or share of the personal estate respectively, unless it be otherwise expressed in the will.*"

Section 2.—"*A widow shall be barred of her right of dower in land, or share in the personal estate by any such devise or bequest, unless within ninety days after the authentication or probat of the will, she shall deliver or transmit to the court where such authentication or probat hath been made, a written renunciation in the following form, or to the following effect: 'I, A. B. widow of——, late of——, deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of*

my husband, exhibited and proved according to law, and I elect to take in lieu thereof my dower or LEGAL SHARE OF THE ESTATE, *of my said husband, A. B.' But, by renouncing all claim to a devise or bequest, or devises or bequests, of personal property made to her by the will of her husband, she shall be entitled to* ONE-THIRD PART OF THE PERSONAL ESTATE *of her husband, which shall remain after the payment of his just debts and claims against him, and* NO MORE."

Section 3.—"*If the will of the husband devise a part of both real and personal estate, she shall renounce the whole, or be otherwise barred of her right to both real and personal estate.*"

Section 4.—"*If the will devise only a part of the real estate, or only a part of the personal estate, the devise shall bar her of only the real, or personal estate, as the case may require; provided, nevertheless, that if the devise of either real or personal estate, or of both, shall be expressly in lieu of her* LEGAL SHARE *of one or both, she shall accordingly be barred, unless she renounce as aforesaid.*"

Section 5.—"*But if in effect* NOTHING *shall pass by such devise, she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent of this act, and consonant to justice, that a widow accepting or abiding by a devise, in lieu of her* LEGAL RIGHT, *shall be considered as a purchaser with a fair consideration.*"

Prior to the passage of the act of 1798, by the common law a widow was entitled to one-third or one-half of the personal estate of her husband remaining at his death, and not required for the payment of his debts, (as he might die with or without children,) as her *legal share*, of which she could not be deprived without her consent. This right is recognized by the act of 1798, as it had been by all previous acts on the same subject.

Griffith vs. Griffith, 4 H. & McH. p. 101.

Coomes vs. Clements, 4 H. & J., p. 480.

A widow had the same vested right to a share of her husband's personal estate, undisposed of at his death and not

required for the payment of his debts, that she had to dower in his real estate, and both rights are dealt with in the same manner by that act.

The act of 1798, ch. 101, provides for the widow in every aspect.

I.

Sub-ch. 11, Dorsey's Testamentary Law, p. 106.

If her husband dies without leaving a will—

"When all the debts of an estate, exhibited and proved, or notified and not barred, shall have been discharged or settled, and allowed to be retained as herein directed, the administrator shall proceed to make distribution of the surplus as follows:"

Section 1.—"If the intestate have a widow and no child, parent, grand-child, brother or sister, or the child of a brother or sister of the said intestate, the said widow shall be entitled to the whole."

Section 2.—"If there be a widow, and a child or children, or a descendant or descendants from a child, the widow shall have a one-third only."

Section 3.—"If there is a widow, and no child or descend at of the estate, but the said intestate shall leave a father or mother, or brother or sister, the widow shall have one-half.

II.

Sub-ch. 13, Dorsey's Testamentary Law, p. 124.

If her husband makes a will and gives her *"nothing,"* she is remitted to her right at common law.

Section 5.—"But if, in effect, *nothing* shall pass by such devise, she shall not be thereby barred, whether she shall or shall not renounce as aforesaid; it being the intent of this act and consonant to justice, that a widow accepting or abiding by a devise in lieu of *her legal right*, shall be considered as a purchaser with a fair consideration."

4 H. & Mc. H., 101.

4 H. & J., 280.

III.

Sub-ch. 13, Dorsey's Testamentary Law, p. 123, Sect. 2.

If a husband makes a will and bequeaths to her a portion of his personal estate, and she renounces the bequest, she will be entitled to *"one-third part of the personal estate of her husband, which shall remain after the payment of his debts, and* NO MORE."

IV.

Sub-ch. 13, Dorsey's Testamentary Law, p. 122.

If her husband leaves a will, and, as in this case, bequeaths a portion of his personal estate to her, which she accepts, she is thereby barred from any further claim.

The widow has no other right to a share of her husband's personal estate, than such as is conferred upon her, and is recognized by this act of Maryland of 1798. It plainly defines her rights, and declares what her legal share as WIDOW is, in all cases, except when her husband has made a will and given her "nothing," in which case she is remitted, by the statute, to her common law right, of one-third or one-half, as the case may be.

This act in terms expressly declares, that if she accept a bequest under her husband's will, she shall not have any other part of his personal estate.

But it is claimed by the appellant, that the undisposed of surplus is to be distributed in accordance with sub-ch. 11 of the act of 1798, ch. 101, without reference to the will; and it was contended in the court below that the case of Pickering vs. Ld. Stamford (3 Vesey jun., p. 331 and 492,) recognized and established principles which support this view.

It is thought that that case does not aid the appellant. In that case the Vice Chancellor conceded that a devise of real estate to the widow, in lieu of dower, would bar her of dower in lands not disposed of by the will.

Under the act of 1798, the widow is barred by a devise of personal estate, as to the personal estate; in the same man-

ner that she is barred by a devise of real estate, as to the real estate. The act deals with both alike.

In that case the Vice Chancellor conceded, that, by the custom of London, if a widow had agreed to accept a consideration in lieu of her widow's share, she would be thereby barred.

With us, the act of 1798 takes the place of the custom of London, is founded upon it, (4 H. & McH., p. 122,) and forms a part of every marriage contract.

The Chancellor in his decision (p. 492,) relied upon the following points, viz:

That one next of kin could not ask the court to read the will against another next of kin: that in a case of legal intestacy, the court could not look at the will; and that "neither an heir at law, nor, by parity of reason, next of kin, can be *barred* by anything but a disposition of the heritable subject, or personal estate, to some person capable of taking." (P. 493.)

Neither of these propositions is applicable to the present case.

By the act of 1798, sub-ch. 13, if the husband makes a bequest to the widow, which she renounces, she is only entitled to *one-third* of his personal estate, and *no more*, although he died without leaving children; and if she accepts the bequest, she is barred of her legal share of one-third, or, &c., as the case may be.

The bar is not limited to personal estate disposed of by the will, for if that had been intended, it could readily have been expressed; but it applies to all his personal estate, so that with us the court must look at the will, and a distributee may require the court to read it, on a question of distribution of an undisposed of surplus, in order to ascertain the widow's rights.

The proposition that an heir, or next of kin, cannot be deprived of that portion of an estate which the law casts upon them, otherwise than in some mode authorized by law,

will not be controverted.

The same legislative power, however, which can create an absolute interest, may create a qualified interest.

The power of Congress to pass or adopt a law providing that a testator may deprive his heirs at law, or next of kin, of any portion of his real or personal estate, by merely declaring in his will that they shall not have it, will hardly be denied. It is admitted, that he may deprive them of it by giving it to another. The only question in this case is, whether or not such a law has been passed or adopted.

Assuming that under the act of 1798, a testator cannot deprive his next of kin of his personal estate, otherwise than by disposing of it to others, yet such is not the case as to his widow, as he may, under that act, bar her by making to her a bequest which she accepts, although he does not dispose of the residue of the property to others. That act authorizes him to bar her, and disposes of the property if he does not *dispose* of it.

Act of 1798, ch. 101, sub-ch. 11, Dorsey's Testamentary Law, p. 106-7.

Section 4.—"The surplus, exclusive of the *widow's share*, or the whole surplus, (if there be no widow,) shall go as follows:"

Section 15.—"If there be no relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the State, to be applied as the Legislature shall hereafter direct, saving to the different schools, &c."

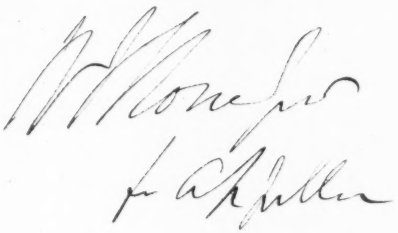
If Wm. Campbell left no next of kin, all his undisposed of personal estate, other than the "widow's share," would, under the statute, go to the United States for the public schools. The widow having accepted a bequest under the will, is barred of her "widow's share," the only right she has to his personal estate, and the whole surplus must go to the United States, as if there was no widow.

The answer to the case of Pickering vs. Ld. Stamford, and all similar cases, is, that no such statute as that of 1798 existed within the jurisdiction in which such decisions were made.

The act of 1798 not only declares that a bequest of personal estate is conclusive evidence of the testator's *intention* to bar his widow of her claim as widow; but goes further, and declares the *effect* of a bequest made to and accepted by her, viz: that she shall thereby be barred of her share of his personal estate.

It is submitted that plainer language than that used in the act of 1798, to deprive a widow of any interest in an undisposed of surplus, when she shall have accepted a bequest under her husband's will, could not have been adopted; and that the appellant having accepted a bequest under her husband's will, the surplus of his estate is to be disposed of as if she did not exist.

It is respectfully submitted, that if the court takes jurisdiction of the case, the decree below should be affirmed with costs.



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